



SEP - 5 2003

TO: Wynethea Walker
Acting Director, Audit Liaison Staff
Centers for Medicare & Medicaid Services

FROM: Dennis J. Duquette *DJ Duquette*
Deputy Inspector General
for Audit Services

SUBJECT: Review of Medical Claims Made to Medicaid for Beneficiaries Under the Age of 21 Who Reside in Institutions for Mental Diseases Within the State of Texas (A-06-03-00009)

We are alerting you to the issuance of the subject final audit report within 5 business days from the date of this memorandum. A copy of the report is attached. This report is one of a series of reports involving our multi-state initiative focusing on claims to Medicaid for residents of institutions for mental diseases (IMD). This review was conducted pursuant to our longstanding concern that States are not complying with the Centers for Medicare & Medicaid Services's (CMS) guidance that generally prohibited Federal Medicaid funding for IMD residents under the age of 65. An exception to that general rule allows States to claim Federal financial participation (FFP) under the Medicaid program for inpatient psychiatric services provided to IMD residents under 21. We suggest you share this report with components of CMS involved with program integrity, provider issues, and State Medicaid agency oversight, particularly the Center for Medicaid and State Operations.

The objective of our review was to determine if controls were in place to preclude the Texas Department of Health from claiming FFP under the Medicaid program for medical services, except inpatient psychiatric services, provided to IMD residents under the age of 21. Examples of the types of medical claims included in this review were outpatient hospital, physician, laboratory, pharmacy, and transportation. Our audit period was September 1, 1997 through August 31, 2000 and focused on the 27 private and 10 State operated psychiatric hospitals that were IMDs.

Federal regulations at 42 CFR 435.1009 define an IMD as a hospital, nursing facility, or other institution with more than 16 beds that is primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. Section 1905(a) of the Social Security Act and implementing Federal regulations at 42 CFR 441.13 and 435.1008 preclude FFP for any services to residents under the age of 65 who are in an IMD, except for inpatient psychiatric services provided to individuals under the age of 21, and in some instances to those under the age of 22.

For the period September 1, 1997 through August 31, 2000, the Texas Department of Health improperly claimed Federal funds for medical services provided to IMD residents under the age

of 21. As a result, Federal funding totaling \$1,290,047 was improperly claimed under the Medicaid program for IMD residents at the 27 private and 10 State operated IMDs included in our audit. Texas Department of Health officials disclosed that there were neither edits nor mechanisms within its fiscal agent's Medicaid Management Information System to detect and prevent Federal funds from being claimed for IMD residents under the age of 21.

We recommended that Texas:

- refund \$1,290,047 to the Federal Government for the improperly claimed FFP during the period September 1, 1997 through August 31, 2000,
- work with the National Heritage Insurance Company to develop controls or edits within the Medicaid Management Information System to detect and prevent FFP from being claimed for medical services provided to IMD residents under the age of 21 in psychiatric hospitals,
- discontinue claiming FFP for IMD residents under the age of 21 when these beneficiaries receive medical services, and
- identify and return any FFP improperly claimed subsequent to August 31, 2000.

While State officials said that they would recover payments for the claims that were improperly paid, our review focused on the improper claiming of FFP by the State Medicaid agency, not on inappropriate payments received by providers. The improperly claimed FFP associated with this audit, as well as any identified subsequently, should be refunded to the Federal Government irrespective of whether or not payments are recouped from providers.

If you have any questions or comments about this report, please do not hesitate to call me or your staff may contact George M. Reeb, Assistant Inspector General for the Centers for Medicare & Medicaid Audits, at (410) 786-7104 or Gordon L. Sato, Regional Inspector General for Audit Services, Region VI, at (214) 767-8414.

Attachment



SEP -9 2003

Report Number: A-06-03-00009

Mr. Albert Hawkins
Commissioner
Texas Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

Dear Mr. Hawkins:

Enclosed are two copies of the Department of Health and Human Services (HHS), Office of Inspector General's (OIG) final report entitled, "Review of Medical Claims Made to Medicaid for Beneficiaries Under the Age of 21 Who Reside in Institutions for Mental Diseases Within the State of Texas."

Final determination as to actions taken on all matters reported will be made by the HHS action official named below. We request that you respond to the HHS action official within 30 days from the date of this letter. Your response should present any comments or additional information that you believe may have a bearing on the final determination.

In accordance with the principles of the Freedom of Information Act (5 U.S.C. 552, as amended by Public Law 104-231), OIG reports are made available to members of the public to the extent information contained therein is not subject to exemptions in the Act. (See 45 CFR part 5.) As such, within 10 business days after the final report is issued, it will be posted on the Internet at <http://oig.hhs.gov>.

To facilitate identification, please refer to report number A-06-03-00009 in all correspondence relating to this report.

Sincerely yours,

A handwritten signature in black ink, which appears to read "Gordon L. Sato", is written over a horizontal line.

Gordon L. Sato
Regional Inspector General for
Audit Services

Enclosure- as stated

Page 2 – Mr. Albert Hawkins

Direct Reply to HHS Action Official:

James R. Farris, M.D.
Regional Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
1301 Young Street, Room 714
Dallas, Texas 75202

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICAL CLAIMS MADE
TO MEDICAID FOR BENEFICIARIES
UNDER THE AGE OF 21 WHO RESIDE
IN INSTITUTIONS FOR MENTAL
DISEASES WITHIN THE
STATE OF TEXAS**



**SEPTEMBER 2003
A-06-03-00009**

EXECUTIVE SUMMARY

OBJECTIVE

The objective of our review was to determine if controls were in place to effectively preclude the Texas Department of Health from claiming Federal financial participation (FFP) under the Medicaid program for medical services, except inpatient psychiatric services, provided to institutions for mental diseases (IMD) residents under the age of 21. Examples of the types of medical claims included in this review were outpatient hospital, physician, laboratory, pharmacy, and transportation.

FINDINGS

Section 1905(a) of the Social Security Act and implementing Federal regulations at 42 CFR 441.13 and 435.1008 preclude FFP for any services to residents under the age of 65 who are in an IMD, except for inpatient psychiatric services provided to individuals under the age of 21, and in some instances for those who are under the age of 22. The Texas Department of Health improperly claimed FFP totaling \$1,290,047 for medical services provided to IMD residents under the age of 21 for the period September 1, 1997 through August 31, 2000. The Texas Department of Health officials disclosed that there were neither edits nor mechanisms within National Heritage Insurance Company's Medicaid Management Information System to detect and prevent FFP from being claimed for IMD residents under the age of 21. However, as a result of our prior audits, the Texas Health and Human Services Commission (Commission) is working on ways to prevent the improper claiming of FFP in the future.

RECOMMENDATIONS

We recommended that the Commission ensure that the Texas Department of Health:

1. Refund \$1,290,047 to the Federal Government for the improperly claimed FFP during the period September 1, 1997 through August 31, 2000.
2. Work with the National Heritage Insurance Company to develop controls or edits within the Medicaid Management Information System to detect and prevent FFP from being claimed for medical services provided to IMD residents under the age of 21 in psychiatric hospitals.
3. Discontinue claiming FFP for IMD residents under the age of 21 when these beneficiaries receive medical services.
4. Identify and return any FFP improperly claimed subsequent to August 31, 2000.

AUDITEE'S COMMENTS

In response to our draft report, the Commission was in general agreement with our recommendations. The Commission will examine the claims identified in our audit and seek reimbursement from the providers for the claims that were inappropriately paid during the period September 1, 1997 through August 31, 2000. In addition, Commission officials stated that it will request providers to reimburse the overpaid amounts for any improper claims identified subsequent to August 31, 2000. Finally, Commission officials stated that it was working with the National Heritage Insurance Company to implement controls and edits to detect and prevent FFP from being improperly claimed. However, changes to the Commission's Medicaid Management Information System were currently being affected by the transition to a new claims administrator, Affiliated Computer Services. To allow for the transition, a freeze was placed on any new changes to the system until the transition has taken place, which was estimated to be completed by March 2004. The full text of the Commission's comments is included as Appendix B.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

While Commission officials stated that they would recover payments for the claims that were improperly paid for the period September 1, 1997 through August 31, 2000, our review focused on the improper claiming of FFP by the State Medicaid agency, not on inappropriate payments received by providers. Therefore, the improperly claimed FFP associated with this audit, as well as any identified subsequently, should be refunded to the Federal Government irrespective of whether or not payments are recouped from providers.

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INTRODUCTION

BACKGROUND

Medicaid Exclusion - Institution for Mental Diseases

An institution for mental diseases (IMD) is defined as a hospital, nursing facility, or other institution of more than 16 beds, that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care, and related services. Psychiatric hospitals (including State operated and private psychiatric hospitals) with more than 16 beds are always IMDs.

Federal law and regulations prohibit Federal financial participation (FFP) for any services to residents under the age of 65 who are in an IMD, except for inpatient psychiatric services provided to individuals under the age of 21, and in some instances for those who are under the age of 22. The basis for the IMD exclusion of FFP was established in the 1950 amendments to the Social Security Act (Act). Those amendments excluded all Federal assistance payments for residents of IMDs. The creation of the Medicaid program in 1965 permitted FFP for the first time for residents of IMDs in certain situations. Specifically, FFP was allowed for inpatient care provided to IMD residents age 65 and over. The 1972 amendments to the Act extended FFP for inpatient psychiatric care to individuals under the age of 21.

Texas' Medicaid Program

Texas began participating in the Medicaid program in September 1967. The Texas Health and Human Services Commission (Commission) has been the single State agency for Medicaid since January 1993 with the State Medicaid Director administering the program. The Texas Department of Health is the Medicaid operating agency that provides assistance with claims processing to certain other operating agencies through a contract with the National Heritage Insurance Company. The National Heritage Insurance Company is the Medicaid Management Information System fiscal agent for the Medicaid program and has administered the program since 1977. The Texas Department of Health is also responsible for regulating the State's private psychiatric hospitals. The Texas Department of Mental Health and Mental Retardation is responsible for operating the State psychiatric hospitals.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our review was to determine if controls were in place to effectively preclude the Texas Department of Health from claiming FFP under the Medicaid program for medical services, except inpatient psychiatric services, provided to IMD residents under the age of 21. Examples of the types of medical claims included in this review were outpatient hospital, physician, laboratory, pharmacy, and transportation.

Scope

The audit period was September 1, 1997 through August 31, 2000. The review focused on 27 private and 10 State operated psychiatric hospitals that were IMDs. (See Appendix A for a list of the hospitals.)

Methodology

In order to accomplish our audit objective, we obtained a listing of State operated psychiatric hospitals from the Texas Department of Mental Health and Mental Retardation and a listing of private psychiatric hospitals from the Texas Department of Health within the State that provided services to individuals under the age of 21. We compared the two listings to one we obtained from the Centers for Medicare & Medicaid Services (CMS) and identified one additional private psychiatric hospital. Of the 30 private psychiatric hospitals, we determined that 3 did not accept Medicaid. Therefore, for audit purposes, only 27 private and 10 State operated psychiatric hospitals were included in our review.

Officials from the Texas Department of Mental Health and Mental Retardation provided a complete listing of Medicaid eligible individuals under the age of 21 residing in State operated psychiatric hospitals during our audit period. We sent letters to the private psychiatric hospitals requesting a listing of their Medicaid eligible residents under the age of 21 admitted to the hospitals during our audit period. We created three files from the listings received from the private psychiatric hospitals:

- Residents for which the IMD provided Medicaid numbers;
- Residents for which the IMD provided social security numbers; and
- Residents for which we were unable to determine if the numbers provided were Medicaid numbers or social security numbers.

We worked with the officials from the Texas Department of Mental Health and Mental Retardation and the IMDs to resolve any discrepancies noted in the listings, such as incomplete or missing Medicaid or social security numbers. We removed from our files the names of those individuals for which we were unable to resolve discrepancies.

We provided a copy of our files to the National Heritage Insurance Company and the Texas Department of Health. For each individual listed in our files, the National Heritage Insurance Company extracted all Medicaid payments for outpatient hospital, physician, and laboratory services and the Texas Department of Health extracted all Medicaid payments for pharmacy and transportation claims made during our 3-year audit period. However, the Texas Department of Health was not able to access and provide payments for transportation services prior to September 1, 1998.

We then used computer programming to match the residents' IMD admission and discharge dates to the Medicaid payments to identify payments for services that were provided during the time the individual was a resident of the IMD, and thus unallowable for FFP. Any claims for inpatient psychiatric services were then removed, as they are

allowable for IMD residents under the age of 21. Finally, we calculated the FFP that had been improperly claimed for the services during the period September 1, 1997 through August 31, 2000.

We held discussions with officials from the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Commission, the National Heritage Insurance Company, and the IMDs included in our audit, and obtained and reviewed applicable policies and procedures relevant to our audit.

Our review was performed in accordance with generally accepted government auditing standards. During our audit, we did not review the overall internal control structure of the State or the Medicaid program. Rather, our internal control review was limited to obtaining an understanding of the State's controls to prevent FFP from being claimed under the Medicaid program for medical services, except inpatient psychiatric services, provided to IMD residents under the age of 21.

Audit fieldwork was performed at the Texas Department of Health, our Austin field office, and our Dallas regional office during the period October 2002 through March 2003.

FINDINGS AND RECOMMENDATIONS

The Texas Department of Health improperly claimed FFP for medical services provided to IMD residents under the age of 21. The improper claiming of FFP occurred because there were neither edits nor mechanisms within the National Heritage Insurance Company's Medicaid Management Information System to detect and prevent FFP for these services. As a result, during the period September 1, 1997 through August 31, 2000, the Texas Department of Health improperly claimed \$1,290,047 of FFP under the Medicaid program. The claiming of FFP for these beneficiaries was contrary to Federal laws and regulations and clarifying guidance issued by CMS.

Federal Laws and Regulations

Section 1905(a) of the Act defined the term "medical assistance." Section 1905(a)(14) stated that medical assistance included inpatient hospital services and nursing facility services for individuals 65 years of age or over in an IMD. Section 1905(a)(16) stated that effective January 1, 1973, medical assistance included inpatient psychiatric hospital services for individuals under the age of 21.

The regulations implementing the IMD exclusion in section 1905(a) of the Act are found at 42 CFR 441.13 and 42 CFR 435.1008. Specifically, 42 CFR 441.13, entitled "Prohibitions on FFP: Institutionalized individuals," states that:

"(a) FFP is not available in expenditures for...Any individual who is under age 65 and is in an institution for mental diseases, except an individual who is under age 22 and receiving inpatient psychiatric services under subpart D of this part."

These regulations preclude FFP for any services to residents under the age of 65 who are in an IMD, except for inpatient psychiatric services provided to individuals under the age of 21, and in some instances for those who are under the age of 22.

Centers for Medicare & Medicaid Services Guidance

CMS consistently provided guidance to States that FFP was only available for inpatient psychiatric services under the Medicaid program for individuals who are under the age of 21, and in certain instances those under the age of 22. Specifically, CMS issued Transmittal Number 65 of the State Medicaid Manual in March 1994 and Transmittal Number 69 of the State Medicaid Manual in May 1996. Section 4390 of these manuals is entitled, “Institutions for Mental Diseases.” Section 4390 A.2 of the manuals, entitled “IMD Exclusion,” states that:

“The IMD exclusion is in §1905(a) of the Act in paragraph (B) following the list of Medicaid services. This paragraph states that FFP is not available for any medical assistance under title XIX for services provided to any individual who is under age 65 and who is a patient in an IMD unless the payment is for inpatient psychiatric services for individuals under age 21.”

In summary, based on the Act, the implementing Federal regulations, and CMS’s guidance, FFP cannot be claimed for any medical services, except inpatient psychiatric services for IMD residents under the age of 21.

Improper Claims

The Texas Department of Health improperly claimed FFP for medical services provided to IMD residents under the age of 21. The Texas Department of Health officials disclosed that there were neither edits nor mechanisms within the National Heritage Insurance Company’s Medicaid Management Information System to detect and prevent FFP for medical services provided to IMD residents under the age of 21. However, as a result of our prior audits (report numbers A-06-01-00054 and A-06-02-00026 issued June 28, 2002 and January 9, 2003, respectively), the Commission was working on ways to prevent the improper claiming of FFP in the future. During the period September 1, 1997 through August 31, 2000, the Texas Department of Health improperly claimed \$1,290,047 of FFP under the Medicaid program for IMD residents under the age of 21.

RECOMMENDATIONS

We recommended that the Commission ensure that the Texas Department of Health:

1. Refund \$1,290,047 to the Federal Government for the improperly claimed FFP during the period September 1, 1997 through August 31, 2000.
2. Work with the National Heritage Insurance Company to develop controls or edits within the Medicaid Management Information System to detect and prevent FFP from being claimed for medical services provided to IMD residents under the age of 21 in psychiatric hospitals.

3. Discontinue claiming FFP for IMD residents under the age of 21 when these beneficiaries receive medical services.
4. Identify and return any FFP improperly claimed subsequent to August 31, 2000.

AUDITEE'S COMMENTS

In response to our draft report, the Commission was in general agreement with our recommendations. The Commission will examine the claims identified in our audit and seek reimbursement from the providers for the claims that were inappropriately paid during the period September 1, 1997 through August 31, 2000. In addition, the Commission officials stated that it will request providers to reimburse the overpaid amounts for any improper claims identified subsequent to August 31, 2000. Finally, the Commission officials stated that it is working with the National Heritage Insurance Company to implement controls and edits to detect and prevent FFP from being improperly claimed. However, changes to the Commission's Medicaid Management Information System are currently being affected by the transition to a new claims administrator, Affiliated Computer Services. To allow for the transition, a freeze was placed on any new changes to the system until the transition has taken place, which is estimated to be completed by March 2004. The full text of the Commission's comments is included as Appendix B.

OFFICE OF INSPECTOR GENERAL'S RESPONSE

While Commission officials stated that they would recover payments for the claims that were improperly paid for the period September 1, 1997 through August 31, 2000, our review focused on the improper claiming of FFP by the State Medicaid agency, not on inappropriate payments received by providers. Therefore, the improperly claimed FFP associated with this audit, as well as any identified subsequently, should be refunded to the Federal Government irrespective of whether or not payments are recouped from providers.

LIST OF 37 IMDs INCLUDED IN OUR AUDIT

State Psychiatric Hospital Name

1. Austin State Hospital
2. Big Spring State Hospital
3. El Paso State Center
4. Kerrville State Hospital
5. North Texas State Hospital
6. Rusk State Hospital
7. San Antonio State Hospital
8. Terrell State Hospital
9. Rio Grande State Center
10. Waco Center for Youth

Private Psychiatric Hospital Name

11. Cedar Crest Hospital
12. Cypress Creek Hospital
13. Desert Springs Medical Center
14. DePaul Center
15. Devereux Texas Treatment Network
16. El Paso Psychiatric Center
17. Glen Oaks Hospital
18. Green Oaks Hospital
19. Harris County Psychiatric Center
20. Harris Methodist Springwood Hospital
21. Intracare Medical Center Hospital
22. Intracare North Hospital
23. Las Palmas Medical Center
24. Laurel Ridge Hospital
25. Meadow Pines
26. Millwood Hospital
27. Mission Vista Hospital
28. Padre Behavioral Hospital
29. Red River Hospital
30. River Crest Hospital
31. Seton Shoal Creek
32. Seay Behavioral Health Center
33. Southwest Mental Health Center
34. Sunrise Canyon
35. The Cedars Hospital
36. Timberlawn Mental Health System
37. West Oaks Hospital

Audit Note: We obtained a list of 30 private psychiatric hospitals within the State from the Texas Department of Health and CMS. We determined, however, that St. David's Pavilion, The Brown Schools Rehabilitation Center, and The Devereux Foundation did not accept Medicaid. Therefore, only the 27 private psychiatric hospitals named above were included in our audit.



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
COMMISSIONER

June 12, 2003

Report Number: A-06-03-00009

Mr. Gordon L. Sato
Regional Inspector General for Audit Services
Office of the Inspector General
1100 Commerce, Room 632
Dallas, Texas 75242

Dear Mr. Sato:

Thank you for the opportunity to provide comments on the issues you identified in the draft report detailing the results of the Department of Health and Human Services (HHS) Office of Inspector General audit titled, "Review of Medical Claims Made to Medicaid for Beneficiaries Under the Age of 21 Who Reside in Institutions for Mental Diseases Within the State of Texas."

We are in general agreement with your analysis of Title XIX of the Social Security Act, federal regulations, and CMS guidance, that federal financial participation (FFP) cannot be claimed for any services to residents under the age of 65 who are in an institution for mental diseases (IMD), except for inpatient psychiatric services provided to individuals under the age of 21, and in some instances for those who are under the age of 22. We also concur that there were neither edits nor mechanisms within National Heritage Insurance Company's (NHIC) Medicaid Management Information System (MMIS) to detect and prevent improper claiming of FFP for non-covered services.

Beginning September 1, 2001, HHSC assumed operating agency responsibilities for the Medicaid program from the Texas Department of Health (TDH). The state has had an insured arrangement with NHIC since 1997. However, HHSC will be transferring to a fiscal agent arrangement for claims processing and payment with a new contractor, Affiliated Computer Services (ACS), in January 2004.

P. O. Box 13247 • Austin, Texas 78711 • 4900 North Lamar, Fourth Floor, Austin, Texas 78751

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June 12, 2003
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Our responses to the HHS Office of Inspector General recommendations follow.

Recommendation 1

We recommend that HHSC ensure that TDH refund \$1,290,047 to the Federal government for the improperly claimed FFP during the period September 1, 1997 through August 31, 2000.

HHSC Management Response:

HHSC will examine claims identified by the auditors to confirm the nature and amounts of any improper claims. HHSC will notify providers of any improper claims and overpayment amounts, and request providers to reimburse the overpaid amounts.

HHSC will address the resolution of any remaining unsupported FFP amounts once it receives the final audit report.

Recommendation 2

We recommend that HHSC ensure that TDH work with NHIC to develop controls or edits within the MMIS to detect and prevent FFP from being claimed for medical services provided to IMD residents under the age of 21 in psychiatric hospitals.

Recommendation 3

We recommend that HHSC ensure that TDH discontinue claiming FFP for IMD residents under the age of 21 when these beneficiaries receive medical services.

HHSC Management Response:

HHSC is working with NHIC, the current claims administrator, to implement controls and edits to detect and prevent FFP from being improperly claimed. Changes to HHSC's Medicaid Management Information System are currently affected by the transition to a new claims administrator. A freeze on any new changes to the system is necessary to create a stable platform to allow for the transition. The transition is expected to be complete in March 2004. The IMD project is designated as a high priority and every effort is being made to implement the necessary edits at the earliest possible date once the transition process is complete.

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Recommendation 4

We recommend that HHSC ensure that TDH identify and return any FFP improperly claimed subsequent to August 31, 2000.

HHSC Management Response:

HHSC will examine amounts paid in an effort to identify any improper claims related to IMD residents. If HHSC identifies any improper claims subsequent to August 31, 2000, it will notify providers of the improper claims and overpayment amounts, and request providers to reimburse the overpaid amounts.

HHSC will address the resolution of any unsupported FFP amounts once it completes its examination and any subsequent recoupment efforts.

Please let me know if you have any questions or need additional information. I have asked David M. Griffith, CPA, Associate Director for Audit in the Medicaid/CHIP Division, to be the lead staff on this matter. David can be reached by e-mail at David.Griffith@hhsc.state.tx.us or by telephone at (512) 338-6968.

Sincerely,

C. E. Bell, M.D. for

Albert Hawkins

AH:dg

c: Mark Ables, Office of the Inspector General
Charles E. Bell, M.D., Deputy Commissioner
Jason Cooke, Associate Commissioner
Rose Hayden, Associate Commissioner
David Griffith, Associate Director
Cindy Mendl, Program Specialist